

**CLARK
&
BRODY****RECEIVED
CENTRAL FAX CENTER
JAN 12 2009**SUITE 250
1090 VERMONT AVE., N.W.
WASHINGTON, DC 20005
TELEPHONE: (202) 835-1111
FACSIMILE: (202) 835-1755**FACSIMILE TRANSMISSION**

TO: Examiner: Kevin V. QUINTO Art Unit 2826	COMPANY: U.S. Patent and Trademark Office
FAX NUMBER: 571-273-8300	PHONE NUMBER: 571-272-1920

From: Christopher W. Brody

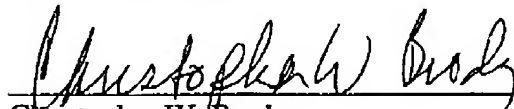
Date: January 12, 2009

Total Number of Pages Including Cover Sheet: 3

CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that the attached **Election With Traverse** for **Serial No. 10/580,653** is facsimile-transmitted to the U.S. Patent and Trademark Office on the date shown above.

Respectfully submitted,



Christopher W. Brody
Registration No. 33,613

If you have not received the total number of pages, please call Tracy Boyden at (202) 835-1111. *Thank you.*

IMPORTANT – This message is intended solely to be used by the individual or entity to which it is addressed. It may contain information which is privileged, confidential and otherwise exempt by law from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to its intended recipient, you are herewith notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us by telephone immediately and return this communication to us at the

RECEIVED
CENTRAL FAX CENTER

JAN 12 2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Wolfgang STOLZ et al.

Art Unit: 2826

Application No.: 10/580,653

Examiner: Quinto, K.

Filed: March 30, 2007

Attorney Dkt. No.: 12007-0074

For: OPTICALLY PUMPED SEMICONDUCTOR DEVICES FOR THE GENERATION OF RADIATION, THEIR PRODUCTION AS WELL AS METHODS FOR THE STRAIN COMPENSATION IN THE LAYER SUCCESSIONS USED WITHIN

ELECTION WITH TRAVERSE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the requirement for restriction dated December 11, 2008, applicants hereby elect the invention defined by the claims of Group II (claims 23-26), with traverse.

The examiner is respectfully asked to reconsider the requirement. Without agreeing with the examiner regarding the assertion that the strain-compensating layers cannot be a special technical feature in view of the prior art, applicant submits that focusing only on this element is an error in the requirement. A "special technical feature" is a technical feature that defines "a contribution which each of the claimed inventions, considered as a whole, makes over the prior art." PCT Rule 13.2. Thus, each claim must be considered to determine if there is any feature in common with another claim that makes a contribution over the prior art when each is considered as a whole. In this regard, the examiner's attention is respectfully directed to:

- a. the recitation in claim 17 of strain-compensating layers, wherein layer succession is achieved by means of MOVPE or other deep temperature

Application No.: 10/580,653

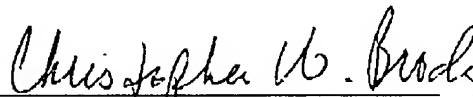
vapor phase epitaxy methods at a temperature of equal to or less than 600°C, and

b. the recitation in claim 23 of strain compensation by MOVPE or another deep temperature vapor phase epitaxy method at a temperature of equal to or less than 600°C.

It is submitted that these features of claims 17 and 23 represent a common special technical feature establishing that the claims are directed to a single general inventive concept, precluding the requirement made in the office action. Accordingly, the examiner is respectfully requested to withdraw the requirement and examine all of the claims.

All necessary extensions of time are hereby requested, even though none is believed to be required. Please charge any fee deficiencies to Deposit Account No. 50-1088.

Respectfully submitted,
CLARK & BRODY



Christopher W. Brody
Registration No. 33,613

Customer No. 22902

1090 Vermont Avenue, N.W., Suite 250
Washington DC 20005
Telephone: 202-835-1111
Facsimile: 202-835-1755

Docket No.: 12007-0074

Date: January 12, 2009